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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Application No.: 10/774,033  
Filed: February 6, 2004  
Inventor(s):  
Shawn L. Elahee

§ Examiner: Ko, Daniel Bokmin  
§ Group/Art Unit: 2189  
§ Atty. Dkt. No: 5760-20600/VRTS-  
§ 0397

Title: Restore of Backup to  
Computer System with  
Filesystem/Volume  
Attribute Modification

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

Lawrence J. Merkel  
Printed Name

*[Signature]* 9/18/06  
Signature Date

PREAPPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. Independent claims 1, 16, and 27 are rejected under 35 U.S.C. § 102(e) as being anticipated by Yamagami et al., U.S. Patent No. 6,836,830 ("Yamagami"). Applicant sets forth the clear errors in the rejections below. Please note that for brevity, only the primary arguments directed mainly to the independent claims are presented, and that additional arguments, e.g., directed to the subject matter of the dependent claims, will be presented if and when the case proceeds to Appeal.

Applicant respectfully submits that claims 1-27 each recite a combination of features not taught or suggested in the cited art. For example, claim 1 recites a combination of features including: "modify at least a first attribute corresponding to a first volume, the first volume corresponding to a computer system's backup state, wherein

the computer system's backup state was previously saved in a backup operation, and wherein the first attribute is modified in the computer system's backup state subsequent to the backup operation; and subsequent to modifying the first attribute, cause the first volume with the modified first attribute to be created on a first computer system as part of a restore of the computer system's backup state to the first computer system."

Yamagami does not teach or suggest the above highlighted features. Rather, Yamagami teaches modifying a volume as part of making a backup. For example, Yamagami teaches "This embodiment supports the command for changing the attribute of the volume so that the user volume for saving the user data and the working volume for storing the saving data are replaced in use. This makes it possible to change the number of the working volumes according to a multiplicity of the required copy request and effectively utilize the working volume resources." (Yamagami, col. 17, lines 28-34) Thus, this section of Yamagami (cited by the Office Action with regard to claim 1) relates to changing volume resources to make a copy of the volume. This is further supported by Yamagami's statement of the field of the invention: "a method of backing up data stored in a storage unit provided in a computer system. More particularly, the present invention relates to a method of backing up data from a disk system into a storage medium for a backup without having to interrupt I/O processing of an application program running on a computer." (Yamagami, col. 1, lines 8-12).

In fact, Yamagami appears to be focused on the creation of backup copies, without touching on recovery from a backup copy at all. The Office Action cited col. 4, lines 41-47, with regard to restoring. While this section does mention controlling a restore operation, no details are provided. The sections cited to allegedly teach changing volume attributes all occur as part of the backup operation. There is no teaching of changing a volume attribute subsequent to the backup operation, and creating the volume with the modified attribute in a restore operation.

In the Response to Arguments section, the Office Action asserts that "Yamagami saves a copy after making changes to the attributes of the volume, which is equivalent to

making a backup subsequent to modifying the first attribute." (Office Action, page 8, lines 12-14). Irrespective of the correctness of the above assertion, the above assertion does not teach the highlighted features of claim 1. Claim 1 recites "the first attribute is modified in the computer system's backup state subsequent to the backup operation". This is **the opposite** of making a backup subsequent to modifying the first attribute, as asserted above.

Furthermore, the Response to Arguments section states that "Since Yamagami can save copies after making changes to the attribute of the volume, the restoring can be done with the copy of the modified attribute". Applicant respectfully disagrees, and reasserts that Yamagami does not teach restoring the volume. The word "restore" is used in col. 4, lines 41-47, but no other information is given and thus the features highlighted above are not taught.

For at least the above stated reasons, Applicant submits that claim 1 is patentable over the cited art. Claims 2-15, being dependent from claim 1, are similarly patentable over the cited art for at least the above stated reasons. Each of claims 2-15 recite additional combinations of features not taught or suggested in the cited art. **Applicant reserves the right to highlight such additional features on Appeal.**

Claim 16 recites a combination of features including: "modifying at least a first attribute corresponding to a first volume, the first volume corresponding to a computer system's backup state, wherein the computer system's backup state was previously saved in a backup operation, and wherein the modifying is performed in the computer system's backup state subsequent to the backup operation; and subsequent to the modifying, initiating a restore of the computer system's backup state, including the first volume with the modified first attribute, to a first computer system, wherein the restore comprises creating the first volume on the first computer system." The same teachings of Yamagami highlighted above with regard to claim 1 are alleged to teach the features of claim 16. Applicant respectfully submits that Yamagami does not teach or suggest the above highlighted features, either. Accordingly, Applicant submits that claim 16 is

patentable over the cited art. Claims 17-26, being dependent from claim 16, are similarly patentable over the cited art for at least the above stated reasons. Each of claims 17-26 recite additional combinations of features not taught or suggested in the cited art.

**Applicant reserves the right to highlight such additional features on Appeal.**

Claim 27 recites a combination of features including: "a first computer system configured to modify at least a first attribute of a first volume corresponding to a computer system's backup state, wherein the computer system's backup state was previously saved in a backup operation, and wherein the first attribute is modified in the computer system's backup state subsequent to the backup operation, and wherein the first computer system is configured to subsequently initiate a restore of the computer system's backup state, including the first volume with the modified first attribute." The same teachings of Yamagami highlighted above with regard to claim 1 are alleged to teach the features of claim 27. Applicant respectfully submits that Yamagami does not teach or suggest the above highlighted features, either. Accordingly, Applicant submits that claim 27 is patentable over the cited art. **Applicant reserves the right to highlight such additional features on Appeal.**

### CONCLUSION


Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-20600/LJM.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Request for Approval of Drawing Changes
- ☐ Notice of Change of Address
- ☐ Fee Authorization Form authorizing a deposit account debit in the amount of \$  
for fees (      ).
- ☐ Other:

Respectfully submitted,

  
Lawrence J. Merkel  
Reg. No. 41,191  
AGENT FOR APPLICANT(S)

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Date: 9/18/06